IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 327 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Gujarat State Road Transport Corporation: Appellant.
Versus
CHAGANLAL BHAWANJI JANTIA and 5 OTHERS. : Respondents.

Appearance:
MR MD PANDYA, Advocate for appellant.
Mr. R.M. Chhaya, for Mr. N.D. Nanavati,
Advocate for Respondent No. 1 to 5.
Respondent No.6 served.

CORAM : MR.JUSTICE H.R.SHELAT
Date of decision: 22/04/97

ORAL JUDGEMENT

This appeal is directed against the judgment and award, passed by the then learned Chairman of Motor Accident Claims Tribunal (Aux) at Junagadh, in Motor Accident Claim Petition No. 190 of 1979, awarding the compensation of Rs. 30,200/- together with interest at the rate of 6% p.a. and cost in proportion.

2. The facts in brief leading the present appellant

to file this appeal may be stated. Dinesh was the son of respondents No. 1 & 2, brother of respondents No. 3 & 4, and grandson of respondent No.5. He was aged 19 years 10 months and 4 days. He was studying in Commerce College and had passed F.Y. B.Com. examination. On 25th May 1979 in the morning he was going towards Junagadh driving his motorcycle No. GJO 4541. He was, as alleged, driving the motorcycle at the moderate speed keeping the rules of traffic in mind. He was also driving remaining on his left side of the road. When he reached near Village Timbawadi, at 7.30 a.m. one S.T. bus from Junagadh to Porbandar was approaching from the opposite direction. The number of that bus was GRL 7438. The opponent No.6 was driving that bus. As alleged by respondents No. 1 to 5 the bus was being driven at the hectic speed endangering human life. As the bus was driven negligently it collided against the motorcycle, as a result Dinesh was knocked down seriously injured and succumbed to the injuries at the spot. The respondents No. 1 to 5 lost their promising and aspiring son, who would have, according to them, helped them in future, and especially during their old age, had he survived. As they sustained the loss, to make the loss good they filed the petition for compensation under the provisions of Motor Vehicles Act and prayed for compensation of Rs. 5,00,000/- but later on they reduced the claim to Rs. 1,00,000/-. The petition was filed against the present appellant joined as opponent No.2 and the respondent No.6 joined as opponent No.1.

3. After being served with the summons the appellant and respondent No.6 appeared and filed their written statement submitting that the driver was not at all at fault. He was driving the bus at the moderate speed remaining on the left side of the road, but unfortunately the incident happened because of the tyre of the motorcycle driven by the deceased, Dinesh suddenly burst and Dinesh lost the control over his vehicle. Thus the incident happened which could be termed pure accident rather than fault on the part of opponent No.6. The learned Chairman of the Tribunal after framing necessary issues, recording the evidence and appreciating the evidence before him held that the incident happened because of the sole negligence on the part of opponent No.6 and there was no negligence on the part of the deceased. He then awarded the compensation of Rs. 30,200/- together with interest and costs passing necessary award. It is against that judgment and award, the present appeal has been preferred.

4. Miss. Mayaben Desai, learned advocate

representing the appellant, challenged the judgment and award firstly on the finding on negligence. According to her, the incident happened because of the sole negligence of the deceased as the driver of the S.T. bus was cautious in driving the bus remaining on the left side; but the Tribunal, overlooking necessary evidence, fell into error. She then drew my attention to oral evidence on record and the Panchnama, Exh. 25 drawn by the police during the course of the investigation. Mr. Chhaya, the learned advocate for the respondents No. 1 to 5 (Ori.petitioners No. 1 to 5) supported the finding of the Tribunal.

5. The petition has been filed u/s. 110-A of the Motor Vehicles Act, 1939 (now Sec. 116 M.V. Act, 1988) for compensation. That provision deals with fault liability. When that is so, the party praying for the compensation has not only to allege negligence on the part of the driver of the offending motor vehicle, but has to establish the same adducing necessary oral or documentary evidence. If he fails to lead the evidence or the evidence is not sufficient, he cannot succeed. I will now peruse the evidence on record throwing light on the proposition.

6. The respondent No.1 appeared before the Tribunal and deposed at Exh. 34. He was not present at the time of accident and therefore naturally his evidence is not useful to decide the issue about negligence. Parsottambhai Jerambhai is examined at Exh.36. He claims to be the eye witness of the incident stating on oath that he is having fair-price shop near the Timbawadi bus stand. On the day of the incident he was standing near the bus stand and he saw the incident. But whatever he has stated cannot be accepted because from his cross-examination it transpires that he could know about the incident having happened after hearing the noise of collision, and when trapped in the cross-examination, he had to admit that he did not see the incident, but could gather the information from those who had gathered at the bus stand. Further he has also stated that after going to the down town he did not inform any one about the incident and also did not state before the police during the course of the investigation. In view of such evidence, the learned Judge rightly kept the said evidence aside from consideration. Likewise the evidence of Devshi Savdas (Exh. 38) is also rightly kept out of consideration by the learned Judge so far as issue of negligence is concerned. No doubt, Devshi claims to be the eye witness submitting that his house is about 200 to 250 feet away from the bus stand and there is no

obstruction to see the bus stand from the otta of his house. On that day in the morning at 8.00 a.m. he was sitting on the otta and could see the incident, but in the cross-examination he had to accept the truth submitting that he could know only after hearing the noise of collision. He has no idea the manner in which both vehicles collided. His evidence therefore cannot be relied upon for a just decision on the issue of negligence. The opponent No.6 has deposed at Exh. 40. He has naturally found fault with deceased-Dinesh, submitting that he was, remaining on the left side, driving the bus at the moderate speed, but suddenly the tyre of the motorcycle, which was on its left side, burst and the deceased lost the control, as a result motorcycle swerved on its wrong side and straight rushing towards the bus collided against the front portion of his bus. The evidence of the bus driver is the only evidence on record which is required to be appreciated considering other materials on record, and for that the Panchnama as well as the evidence of Dinesh Balkrishna Parekh (Exh.41) are required to be kept in mind.

7. Firstly, I will be dealing with the question of bursting of the tyre. The opponent No.6 has made it clear in his evidence that he could see the deceased coming from the opposite direction when he was at a distance of 50 feet, and when he was at a distance of 40 feet the tyre of the motorcycle burst. Consequently, the deceased lost the control and straight came to his correct side and collided against the front portion of the bus. This statement cannot be accepted because he has also made it clear that he has not seen the tyre being burst. He only believed about the same only on the basis of the noise but he has conveniently not made clear whether it was a noise of collision or a noise some time before the collision and that of a bursting of tyre. It seems to avoid the liability shrewdly the case about bursting of tyre is made out. The expert also points to the same. Dineshbhai Balkrishna Parekh (Exh. 41) is serving as Senior Divisional Mechanical Engineer on the establishment of the appellant. He is the expert on the point and has opined that if the tyre of the motorcycle bursts, it would be dragged upto a maximum distance of 10 to 15 feet and the driver of the motorcycle would lose the control and would fall down. When he would be accordingly losing the control, there would not be collision as therefrom also the distance between the two vehicles was about 25 feet, which was sufficient for bus driver to apply brakes and stop the bus. It is not the case that distance was too short to apply brakes and avert the incident. Here both the vehicles have collided

but collision owing to bursting of a tyre is ruled out. At this stage, the evidence of the above stated both the eye witnesses can be considered. After the impact they had gone to the scene of incident and they found the tyre was burst subsequent to the incident. It is quite possible because the front iron sheet part would be the cause. The edge of iron sheet would intrude the tyre at the time of collision and piercing of the iron sheet can be the cause of bursting the tyre subsequently. The learned Chairman of the Tribunal has also discussed this aspect at length to which I am in general agreement and therefore it is not necessary to repeat all those reasonings of the learned Chairman. The theory of bursting of the tyre is rightly ruled out, but the glaring fact appearing on record, it seems, has been overlooked by the learned Chairman. The panchnama Exh. 25 shows that road is East to West in length. Towards East it leads to Junagadh while towards West it leads to Vanthali. The width of the road is 18 feet, and the impact point found by the police is about 8 feet away from the southern border towards North, and 10 feet 3 inches away from the northern border towards South. It therefore follows that the impact took place on the southern half of the road which was the wrong side of the deceased. It is not made clear how the deceased went on the wrong side. When it is not explained, it must be held that he must be driving the motorcycle without any proper care, as a result he went on the wrong side and collided against the bus and therefore he cannot be exonerated so far as the question of negligence is concerned. The bus driver was no doubt on his correct side but when the impact point is found about a feet away from the middle line, and considering the width of the bus as well as the width of the southern half of the road, it can well be said that the bus was also driven at least covering the middle line. Looking to the impact point and bus being driven covering the middle line as well as the motor-bike found to have travelled towards the wrong side, it can be said that both the vehicles were being driven virtually on the middle of the road, and no one took care to move slightly on his respective left side so as to avert the incident. Hence, in this case both can equally be blamed for being rash and negligent in driving their respective vehicles, and to this extent the contention raised on behalf of the appellant must find favour. The learned Chairman of the Tribunal has missed to take note of this significant aspect of the case and fell into error in holding the S.T. driver-opponent No.6 is solely responsible for being rash and negligent in driving the bus.

8. This leads me to switch over to the next point about the quantum of compensation which is also assailed by the appellant. According to the appellant, nothing could have been awarded, or in the alternative, if anything was found awardable, it would not be more than Rs.15,000/- because the deceased was a college student and was not earning at that time. It is not disputed before me that the deceased was aged about 19 years 10 months and 4 days and was studying in the Commerce College. He had already passed F.Y. B.Com examination and must have studied for about 3 to 4 years more. After completing his studies he would have either joined the services or must have started his own business. What he would have then earned has to be ascertained and when the deceased was studying the compensation has to be assessed on reasonable guess work. No doubt, as submitted, sky is the limit for every one and one can according to his efficiency and capacity reach to the highest in the field, but that exceptional situation must not be made the basis for assessing the compensation. What he would have at the minimum level secured the position and earned should be the criteria because the reality that every one does not reach to the highest cannot be lost the sight of. It may on the basis of reasonable guess work be believed that after passing the B.Com. or M.Com. examination, the deceased would have joined the Bank services because in those days this services were considered attractive because of several other benefits over and above higher pay structure than other services. In those days, the total emoluments of a Clerk in the Bank was 600/- to 700/- rupees per month. At the time of incident, the deceased was unmarried. After joining the services he would have married and become a family man, and so he would have certainly helped the father and mother out of his income from such services after the date of joining to the life time of his parents, but vicissitudes of life cannot be lost the sight of. Hence the help cannot remain the same althroughout, it would be fluctuating. Hence the help should be assessed on the average-base. Looking to the then prevailing pay structure, the deceased would have helped the opponents No.1 to 5 providing Rs. 225/- per month. It would come to Rs. 2,700/- per year. Of course, he would have helped the opponents No. 1 & 2 for their whole of the lives but not to the opponents No. 3 & 4 who could have attaining the marriageable age married and would have gone to their respective matrimonial homes, but maximum period of help should be the base. At the time of incident,his mother was aged 39. As he was aged 19 years he would have started earning at the age of 25 and therefore his mother must have started to receive help

from the deceased attaining the age of 45. Ordinarily the span of life must be held to be 70 years. The deceased would have, therefore, helped his parents at least for 25 years. When that is so, in this case, the multiplier of 15 should be adopted. If the yearly dependency is multiplied by 15 it would come to Rs. 40,500/- to which the opponents No.1 to 5 are entitled to under the head "Loss of Dependency". They are entitled to conventional amount of Rs.20,000/-, and thus the total amount to which they are entitled to comes to Rs. 60,500/-.

9. As discussed above,the deceased also equally responsible for the accident and therefore 50% of the amount is required to be sliced down. In doing so,the opponents No. 1 to 5 are entitled to Rs. 30,250/-. The learned Chairman has awarded Rs. 30,200/-, i.e. Rs. 50/- less, but virtually it can be said that same amounts are awarded. Thus, there is no justifiable reason to disturb the assessment of compensation made by the learned Chairman though it is not possible for the reasons stated hereinabove to agree with him on the question of negligence.

10. In the light of what is stated hereinabove, the judgment and award, passed by the Tribunal subject to what has been stated hereinabove on the point of negligence are required to be maintained, and the cross-objections filed on behalf of opponents No. 1 to 5 are hereby rejected. With the result,the appeal fails and is hereby dismissed. There shall be no order as to costs.

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(R.M. Ravindran)
Private Secretary
to the Hon'ble Judge
High Court of Gujarat
Ahmedabad